

Supreme Court of the United States,

OCTOBER TERM, 1905.

Nos. 340 and 341.

EDWIN F. HALE,
Appellant,

AGAINST

WILLIAM HENKEL, United
States Marshal in and for
the Southern District of New
York.

Appellant's
Brief in Reply.

WILLIAM H. MCALISTER,
Appellant,

AGAINST

SAME.

First.

The propositions presented in the First and Second Points of our main brief are that there was nothing in the record before the Circuit Court from which it could see and determine (*a*) that the Grand Jury was engaged in any investigation or inquiry which it had authority to pursue, or in respect to which the oral and documentary evidence sought to be compulsorily extracted from the appellant was pertinent or material; or (*b*) that there was any judicial matter pending at the time such evidence was demanded of the appellant.

Second.

(a) The existence of the "present day *notion*" in respect to the practically unlimited inquisitorial powers of Grand Juries is admitted. We by no means admit its "general adoption."

(b) In the *Counselman* case this Court found it unnecessary to intimate its opinion as to the question referred to in that portion of the opinion quoted by counsel for the Government,

"or as to the question whether the reports of the Grand Jury * * * are or are not consistent with the fact that they were investigating specific charges against particular persons;"

(c) Seemingly our learned opponents fail to grasp our real contention in respect to the legitimate function of a Grand Jury. We do not dispute the power and right of the "Executive Department, through the medium of the Department of Justice," or otherwise, to lend its aid to a proper Grand Jury investigation, by "presenting for the consideration of that body *facts*" tending to establish the violation of a federal statute (Government's Brief in Reply, p. 3.) On the contrary we agree with them that:

"only accusing witnesses; that is, witnesses who have knowledge of *facts* tending to show that the person under investigation has been guilty of a crime, are called before the Grand Jury, and it is upon such evidence that that body is called upon to decide whether there are 'probable grounds' that anybody has been guilty of any particular crime" (*Id.*, pp. 4-5).

We further concede the soundness of the proposition that

"It has been, and it must be, that a Grand Jury is authorized to proceed whenever matters come to their attention from which there arises a greater or less probability that there *has been a violation of the law*" (*Id.*, p. 5).

In such cases there are present all the elements necessary to the proper exercise of the Grand Jury's legitimate function, viz.: *parties*, namely an accuser and an accused (named or unnamed, known or unknown), *a matter in controversy*, namely the existence or non-existence of probable cause to believe the accused guilty of acts constituting a violation of law. There is the *allegation* or *assertion*, in some form (it matters not how or by whom made; *Frisbie* case, 157 U. S., 160) that some one has committed an *act* which constitutes a crime. This is the *issue* which the Grand Jury is to *judicially determine*.

(d) Statutes requiring Grand Juries to be specially charged to inquire into particular classes of offenses merely call for especial vigilance in respect to those offenses. They in no way enlarge the jurisdiction of Grand Juries, or confer "inquisitorial" power—that is, power to embark upon voyages of discovery for the purpose of finding out whether some one may not, perhaps, have committed such an offense. If, however, such statutes were to be construed as extending the powers of Grand Juries so as to authorize general inquisitions it would necessarily follow that without them that authority does not exist. There is, of course, no federal statute of this character involved in the case at bar.

(e) No judicial body can act or proceed in any manner in the absence of an allegation showing the existence of facts justifying its intervention.

In *Matter of Peck v. Cargill*, 167 N. Y., 391, it was held that Section 28 of the New York Liquor Tax Law (Chapter 112, Laws of 1896), authorizing any citizen to commence summary proceedings by petition to forfeit the right to carry on business on account of a violation of the act, but expressly requiring that the "petition shall state the fact upon which said application is based," was not satisfied by an allegation that the petitioner was informed and believed that the particular facts existed, or that the party charged had committed a violation of law, and that such a petition furnished no basis for any judicial action. The Court of Appeals said, per O'Brien, J.:

A special statutory requirement that a party must state certain facts as a basis for an order revoking a certificate of the right to carry on a certain business, is not satisfied or complied with by a mere statement that the moving party suspects or is informed and believes that the particular facts exist, or that the party charged has committed the forbidden acts in violation of law. This principle would seem to be specially applicable to a case like this, where the acts charged and which are at the foundation of the proceeding, not only subject a party to a penalty or a forfeiture, but are also crimes, and punishable criminally. The statute now under consideration authorizes the Judge, upon presentation of a petition stating the facts, to grant an injunction against a transfer of the certificate and an order to show cause. The petition does not confer jurisdiction unless it is in compliance with the statute, and a petition in which all the material facts are stated upon information and belief, without disclosing the sources of the in-

formation or the grounds of the belief, *is no sufficient basis for any judicial action*" (pp. 393-4).

In *Matter of Daries*, 168 N. Y., 89, the same court upheld a statute requiring any justice of the Supreme Court, upon application of the Attorney-General, whenever the latter has determined to commence an action under the Donnelly Anti-Monopoly Act (Laws of 1899, ch. 690; Birdseye's Rev. St. of N. Y., 3d Ed., p. 2105; See our main brief, p. 61) to grant an order for the examination before such justice, or a referee to be appointed by him, of persons whose testimony is material and necessary, *because*, as Vann, J., said, "the expression in the statute * * * do not deprive him of the power to decide whether *upon the facts alleged* the order should be granted." Continuing the learned Judge said:

"The statute is not satisfied by a single statement of the Attorney-General in his petition that he is *informed and believes* that the testimony of such persons is material and necessary, but he must show *how and why* it is material and necessary. This involves the general nature and object of the action that he has determined to bring. A determination to bring an action, indefinite and undefined, is not what the Legislature contemplated, but one, the general character of which is described sufficiently to show that it is *founded upon the statute, as well as upon probable cause*, and that the testimony of the witnesses will be material and necessary therein. Thus the Justice is called upon to exercise the judicial function of deciding whether the application conforms to the statute as thus construed, the same as is required of him when an application is made for an order of arrest, a warrant of attachment or any other provisional remedy" (p. 103).

A case even more in point, if possible, is that of *People ex rel. Sandman v. Tuthill*, 79 New York App. Div., 24. There the relator was examined on oath as a witness before a justice of the peace, in a proceeding based upon an information charging *on information and belief*,

"that on or after the 1st day of May, 1901, at the town of Riverhead, in said County of Suffolk, one David Sandman and other persons of said town of Riverhead, County of Suffolk, did commit the crime of misdemeanor, in that they did at the time and place above named, unlawfully, wilfully and knowingly violate the Liquor Tax Law of the State of New York" (p. 25).

Sandmen was committed for contempt by reason of his refusal to answer a certain question on the ground that it might tend to incriminate him. He was, of course, promptly released on *habeas corpus*; but the Justice continued to take testimony under the information, whereupon Sandman obtained from the Special Term an absolute writ of prohibition restraining the Justice from issuing any further compulsory process.

In unanimously affirming the order allowing the writ the Appellate Division of the Second Department (January, 1903) said, per Woodward J.:

"To make a general allegation that some one has been guilty of a violation of the Liquor Tax Law, a general statute providing the details regulating the sale of intoxicating liquors, and then to permit a general inquiry of the defendant and others as to the entire details of the conduct of the liquor business, would be an act so entirely hostile to our system of jurisprudence as to shock the sense of justice of English speaking people generally. It would be, in effect, to make a man his own accuser, and to subject every detail of his business to ju-

dicial investigation at the whim or caprice of every person in the community. The statute may serve a useful purpose within reasonable limits, but to give it the construction demanded by the appellant is to make it an instrument of petty persecution, having no sanction in our system. The information must set forth that 'a crime' has been committed in order that the magistrate shall have jurisdiction, and we are clearly of opinion that the information before the justice in this proceeding did not meet the requirements of the law" (pp. 25-6).

(b) The learned counsel for the Government argue that "considerations of sound public policy demand that inquisitorial power shall be exercised by the Grand Jury, particularly in a matter of wide public interest, that 'in a matter where from the nature of the offense a large portion of the public is interested or involved' (e. g., riots and conspiracies) the grand jury, in the exercise of a power which is described as 'a survival of the ancient practice of the early grand juries which acted upon *mere rumor*' can to-day 'investigate on the *suggestion* of the prosecuting attorney,' and that 'if it is necessary in order to effectually investigate the so-called Tobacco Trust to deal with its *supposed* violation of the Anti-Trust law as a matter of public notoriety, the Court should aid the government in so doing.' (Brief for the United States, pp. 52-3.)

And what is the justification for the application of this startling theory? Nothing more nor less than the Attorney General's assertion, *de hors* the record, that

"By *legal* or illegal means that *trust* has a practical monopoly of the tobacco trade."

If it be true that the American Tobacco Company has accomplished such a result by *legal means*, it

has violated no law. The Attorney General, although he *supposes* otherwise, confesses that he has *no probable cause* for so alleging.

Carried to its logical conclusion, this argument would authorize a Grand Jury investigation into the private affairs of every individual who has amassed a fortune by the development and extension of a successful business enterprise. Every such individual has gained his wealth by "*legal* or illegal means." Without doubt many people *suppose* his methods have been, and perhaps must have been, illegal; if so he has violated *some law*, Federal or State. His methods have thus become a "matter of public notoriety," and a zealous, or indeed any prosecuting attorney, should therefore "effectually investigate" his business life and affairs by calling his employees, his friends and his family before the Grand Jury and questioning them with a view to discovering whether or not the general *suspicion* is well founded.

Our learned adversaries misapprehend the doctrine they invoke. Where from *known facts* there is reasonable ground to believe that a crime has been committed, whether it be "a matter of public notoriety," or the pettiest transgression of law, the Grand Jury may initiate an investigation directed against the *perpetrator of the act*, be he named or unnamed, known or unknown. Then there is a charge, based upon an allegation of fact, an accused, even though his identity be unknown, and a proper subject matter for investigation and determination. Until then there is no occasion or warrant for a Grand Jury inquiry.

(g) With the exception of the few cases to which we shall presently allude, all the authorities cited by the learned counsel for the Government are directly in accord with our contention. Upon anal-

government that the construction of the act of February 25th, 1903, for which we contend would defeat the obvious purpose of the Sherman Law is conclusively answered by the provisions of the act approved eleven days earlier, February 14th, 1903, entitled "An Act to Establish the Department of Commerce and Labor." By the Act of February 14th, 1903, a "Bureau of Corporations" was established, with a "Commissioner of Corporations" as its head, and it was provided in section 6 as follows:

"The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

"In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said 'Act to regulate commerce' and the amendments thereto in respect to common carriers so far

as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said 'Act to regulate commerce' and by 'An Act in relation to testimony before the Interstate Commerce Commission,' and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said 'Act to regulate commerce,' shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section."

This Act of February 14th, 1903, made it the duty of the Commissioner to make "diligent investigation into the organization, conduct and management of the business of any corporation," etc. It provided that the "information so obtained or as much thereof as the President shall direct shall be made public," and it armed the Commissioner with power to "compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths." It gave to the witnesses examined by the Commissioner immunity from prosecution, and thereby took from them their constitutional privilege to refuse to answer self-incriminating questions.

It is idle to argue that any purpose of the Sherman Law would be defeated by the construction of the Act of February 25th, 1903, for which we contend, when eleven days before its passage the executive branch of the government had been given in the Act of February 14th, 1903, this drastic means for acquiring and disseminating information and evidence concerning the management of the business of every corporation (other than common carriers) engaged in interstate commerce.

Fourth.

The Fourth and Fifth Amendments.

At the root of the discussion under this point lies the question whether corporations enjoy the protection of the Fourth and Fifth Amendments.

THE FOURTH AMENDMENT:

"The right of the People to be secure in their persons, houses, papers and effects against unreasonable search and seizures shall not be violated, and no warrants shall issue but upon probable cause supported by other or affirmation, and particularly describing the place to be searched and the person or things to be seized."

THE FIFTH AMENDMENT:

"No person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

In both the Hale case and the McAlister case, the criminal proceeding was not aimed at the individuals, but at the McAndrews & Forbes Company and The American Tobacco Company in the former case, and The American Tobacco Company and The Imperial Tobacco Company in the latter. Under the provisions of the Sherman Act, these corporation defendants were liable to indictment for a crime, and if a charge against them was sustained to conviction and sentence.

By another section of the same act they were liable to forfeit, if guilty, a large part if not all of the corporate property.

By the eighth section of the same Act, *person* or *persons* where used in this act, shall be deemed to include *corporations* and *associations*.

In view of these provisions we do not perceive how it is possible to adopt a construction of these Amendments which shall exclude corporations from their operation. As is pointed out upon the main Brief, all of the authorities support the view that they are included, and with good reason. For if corporations may suffer the judgment of death by dissolution (*People v. N. R. Sugar R. Co.*, 121 N. Y., 582; *No. Securities Co. v. U. S.*, 193 U. S., 197), if they may be condemned to forfeit the corporate property, if they may be indicted, convicted and sentenced to pay a fine as individuals may, what excuse can be made for denying to them the beneficent protection of these amendments.

All analogous cases favor this construction. In *Gulf, Colorado and Santa Fe Ry. vs. Ellis*, 165 U. S., 154, the Court after declaring that corporations are persons within the provisions of the 14th Amendment of the Constitution of the United States (citing numerous cases), proceeded as follows:

“The rights and securities guaranteed to persons by that instrument cannot be disregarded in respect to these artificial entities called corporations any more than they can in respect to the individuals who are the equitable owners of the property belonging to such corporation. A State has no more power to deny to them the equal protection of the law than it has to individuals.”

A corporation is a *citizen* under the provision of the Constitution, which gives Courts of the United

Fourth Amendment, and which was so lucidly expounded by Mr. Justice Bradley in *U. S. vs. Boyd*.

The only justification for requiring a man to leave his home and bring his papers to a court is that they are *relevant* to some issue embraced in a pending judicial proceeding. There is no other excuse for compelling their production. That was the precise point upon which the Court based its decision in *Interstate Commerce Commission v. Baird*.

In the Hale case, not only was no particular paper or papers called for by the subpoena, but there was no charge pending before the Grand Jury as to which any paper could be said to be relevant. The very vagueness of the proceeding would have made the claim of relevancy groundless.

The compulsory search and seizure of the papers in the Hale case was unreasonable also because the subpoena referred to no specific paper or papers, but required the production of every sort and kind of writing which the company had ever acquired in the course of its business from the beginning of its corporate life. The law of privacy tolerates no such practice. One who is called upon to produce papers which are relevant to an issue in a judicial proceeding is entitled to have the papers sought for pointed out with something like definiteness, in respect to time, description, character and contents. The subpoena in the Hale case lacked all of these requisites and under the most liberal construction of the rules applicable to such process was altogether improper and unlawful. That was one of the reasons which induced Judge Wallace to speak of it as a "wanton assault upon the right of privacy."

The McAlister subpoena.

The *subpoena duces tecum* in this case is not open to the strictures upon the Hale subpoena which we have just made. Before the Grand Jury in that case there was, in the language of the Assistant District Attorney, "a complaint and charge made in behalf of the United States of America against The American Tobacco Company and the Imperial Tobacco Company under the so-called 'Sherman Act'" (p. 12).

While the record is silent as to the matter complained of, yet we may assume that there was in fact some specific charge to which the papers called for by the subpoena were relevant, and so far from demanding the production of all the writings of the defendant company, the subpoena pointed out the particular writings sought for, giving in each case the date, the names of the parties, and in one instance a suggestion of the contents.

So far there was nothing in the subpoena upon which the claim of an unreasonable search and seizure might be made.

BUT IN BOTH CASES, MCALISTER AS WELL AS HALE, THE SUBPOENA DUCE TECUM REQUIRED THE RESPECTIVE DEFENDANT CORPORATIONS TO PRODUCE EVIDENCE TO BE USED AGAINST THEM IN A CRIMINAL ACTION OR PROCEEDING IN WHICH THEY WERE NAMED AS DEFENDANTS, AND IN BOTH CASES THE SECRETARY OF THE COMPANY WAS COMMITTED TO JAIL FOR REFUSING TO PRODUCE FOR SUCH PURPOSE THE PAPERS AND WRITINGS BELONGING TO HIS COMPANY OF WHICH HE WAS THE CUSTODIAN.

Such compulsion of itself amounted to an unreasonable search and seizure. The characteristics of the Hale subpoena were only "circumstances of aggravation."

If as we contend corporations are entitled to the protection of the Fourth and Fifth Amendments, how shall their claim of privilege be asserted?

There is but one method, and that is out of the mouth of the officer who, as the custodian of a corporation's papers, is called upon to produce them for use against his company, or who is required to give oral incriminating evidence concerning matters which have come to his knowledge in the course of his employment as one of the company's officers or agents.

Here the corporation's claim of privilege to the protection of the Fourth and Fifth Amendments was asserted by their respective officers,—in the McAlister case expressly (pp. 2 and 12), and in the Hale case by necessary implication (p. 4).

The personal privilege of the witness may be one entity, the corporation's privilege may be another, but unless the corporation can assert its privilege through its representative, how can it ever assert it at all?

As we have pointed out upon our main brief, this is the method which has always been adopted where a corporation insisted upon being protected from giving evidence, documentary or otherwise, to be used against itself in any proceeding for a penalty or forfeiture.

We cite also *State ex rel. Wood v. Simmons*, 15 L. R. A., 676.

That was an information in the nature of a *quo warranto* to annul the charter of Simmons Hardware Co., a Missouri corporation. The information charged the defendant company with having violated the Missouri Statute of 1889 relating to pools and trusts. (Mo. Sess. Acts 1889, p. 97.) By the terms of this Statute, Missouri corporations were prohibited from merging all or any part

of their business or interests in or with any trust, combination or association of persons, etc.

According to Section 6, a corporation violating this provision forfeited its corporate rights and franchises, and its corporate existence ceased and determined. It was also punishable by a fine of not less than one or more than twenty per cent. of its capital stock or amount invested. The President, Treasurer or any director of the corporation was required to make answer under oath as to whether the company had ever been guilty of a violation of the act, and on a refusal to make such oath, the Secretary of State was required to immediately revoke the company's charter. The officers of the corporation were also punishable by fine and imprisonment.

The information charged the defendant with having violated this act (1) in having become a member of certain pools, trusts, &c., and (2) in having failed or refused to make answer through its officers under oath as to whether it had merged its business, &c.

The answer denied the first charge and as to the second insisted that to demand of one of its officers an answer under oath to an official inquiry which might form the subject of a criminal accusation against him was an infringement of his right *and of the rights of the corporation* as well under the Fifth Amendment of the Federal Constitution as well as under the Constitution of Missouri.

The case was considered only with reference to the Missouri Constitution "that no person shall be compelled to testify against himself in a criminal case."

In declaring the statute unconstitutional and directing judgment for the defendant, the Court said:

"The third section involves a penalty
"(in event of a violation of the terms

"of the act) of a fine of not less than "1 and not more than 20 per cent. of the "capital stock against the corporation and "another penalty of fine and imprisonment "upon the officers required by section 6 to "make answer under oath. The corporation "as well as its managers would be thus liable "to a forfeiture of goods and the officers to "imprisonment should they be forced to dis- "close a breach of law on the part of the "corporation."

"If, on the other hand, they held their "peace (as the Constitution permits even the "greatest offender to do), Section 6 of the "Act purports to sanction as a penalty for "so doing the immediate revocation of the "corporate charter. It seems to us very clear "that such attempted legislation is out of "harmony with the true spirit and purpose "of the constitutional language quoted."

The Immunity Statute.

The corporations having asserted their privilege against being compelled to give incriminating evidence, and their respective officers having been committed to jail for refusing to produce the corporate papers or to testify against it, a clear case of unreasonable search and seizure of the corporation's property is made out in the McAlister case, as well as in the Hale case, unless the Immunity Statute of February 25, 1903, is applicable.

Of course if that is applicable, if corporations as well as individuals are within its scope and meaning the claim of an unreasonable search and seizure disappears, so far as the incriminating character of the papers are concerned (as was held with respect to *individuals* in the *Baird* case), although in the Hale case the unreasonable search and seizure would still exist for reasons already stated.

Now, it is contended with great earnestness by

our opponents that corporations have no immunity under the Statute, and as evidence upon this point they refer to the Elkins Act, passed February 19, 1903 (32 Statutes, L. 848), which they contend indicates the intention of Congress to deny immunity to corporations while extending it to natural persons.

It is unnecessary for us here to discuss whether in view of this distinction this act of Congress is constitutional or not. All that need be said in reply is that if Congress has not provided in the immunity Statute of February 25, 1903, a substitute for the privilege which corporations possess under the Fourth and Fifth Amendments, then their constitutional rights are not affected and they remain in the full enjoyment of them.

If a corporation is not within that statute, then surely it may refuse to produce its books and papers to be used as evidence against it in a criminal case.

If a corporation is not within that statute, it surely may decline, through its officers, to testify against itself in a criminal case, just as a corporation defendant in a bill of discovery might decline through its officers to answer self-incriminating interrogatories.

Our view has been that the immunity statute is broad enough to include corporations as well as individuals. It provides that no *person* shall be prosecuted or subjected to a penalty, just as the Fifth Amendment declares that no *person* shall be compelled in any criminal case to be a witness against himself. This immunity statute is an auxiliary of the Sherman Act, and is really a part of it. And the Sherman Act declares that the word PERSON OR PERSONS shall include CORPORATIONS.

It is argued, however, that a corporation is not

intended by the statute because it may not "testify," although, of course, it may "produce evidence documentary," and that the *language* of the statute shows that its immunity is restricted to natural persons.

We reply that there are two ways in which a corporation can be compelled to be a witness against itself in a criminal case.

One way is to compel its officer by actual imprisonment until he complies to produce the papers of the company. Another way is by calling its officer and extracting from his lips information concerning his company's affairs which he has acquired in the course of its service.

In both instances, probably, and surely in the latter, the corporation may be said to "testify." It speaks through its officer. When he is testifying the corporation is testifying.

If, however, as our opponents contend, the language of the immunity statute, and the inferences to be drawn from the Elkins Act and the act creating the Bureau of Corporations, both passed at the same session of Congress as the immunity statute which we are now considering, indicate that Congress did not intend to give immunity to corporations, then we reply that the statute is plainly defective and that until it is amended so as to include and protect corporations, their constitutional rights under the Fourth and Fifth Amendments are in no wise disturbed. Nothing is needed to clear up the matter but a brief amendment to the effect that a corporation testifying through its officer, or, in like manner, producing books and papers, shall be entitled to the same immunity as is given to individuals.

The Government complains that if corporations are within the immunity statute, then the criminal action against the McAndrews and Forbes Co. in the Hale case, and against The American Tobacco

Company in the McAlister case, will fall to the ground. That, of course, will be the result. But the action against the other defendant corporation, who was not called upon to testify or produce evidence against itself, might survive, and, therefore, the prosecution would not be in vain. And the Government is as well off in this respect as prosecutors usually are who undertake to prove any conspiracy, where the common practice is to call upon one defendant to lay the foundation of the case against the other.

And finally it is contended that even if there was an unlawful search and seizure of the corporation's papers in both cases, yet the witnesses, Hale and McAlister, should have answered the oral questions put to them before the Grand Jury.

Our answer is that if the corporation is not given immunity, the *extraction* of incriminating testimony from its officer would be to compel it to be a witness against itself, quite as much as if its books and papers were, by compulsion, produced against it.

The officer of the corporation stood before the Grand Jury in a dual relation. He was there as an individual. He was also there as the representative of the corporation. He was interrogated about its doings and its affairs. It was not enough that the statute gave him immunity as an individual. The constitutional right of the corporation to be protected against being compelled to be a witness against itself would still be violated unless immunity for it was also provided by the statute.

January 9th, 1906.

DELANCEY NICOLL,

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Of Counsel for Appellants.